IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 38743 of 2003(K)

PETITIONER:

K.R.SUDHAKARAN, AGED 47 YEARS,
PROPRIETOR, OMEGA ENTERPRISES, CHATHANNOOR,
RESIDING AT KAVIL HOUSE, MAMPILLIKONAM,
CHATHANNOOR, KOLLAM DISTRICT.

BY ADV. SRI.SHABU SREEDHARAN
SRI.P.A.NOOR MUHAMMED
SRI.CHARLES VARGHESE

RESPONDENTS:
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1. THE APPELLATE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOLLAM - 13.

2. THE ADDITIONAL SALES TAX OFFICER,
SALES TAX OFFICE, CHATHANNOOR,
KOLLAM.

3. THE TAHSILDAR (R.R.),
TALUK OFFICE, KOLLAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE CERTIFICAZTE DATED 7.6.2002

EXT.P2 TRUE COPY OF THE ORDER DATED 20.9.2003 IN STA 4/2003

EXT.P3 TRUE COPY OF THE LETTER NO. 1220-1751/2001-02 DATED 22.9.2003

EXT.P4 TRUE COPY OF THE NOTICE DATED 29.10.2003

ANNEXURE P1 TRUE COPY OF THE ORDER DATED 18.12.2003 IN WPC 38743 OF 2003 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 38743 OF 2003

Dated this the 19th day of November, 2007

JUDGMENT

Petitioner is challenging Ext.P4 recovery proceedings for recovery of arrears of sales tax demanded for the year 2001-02. Petitioner has produced Ext.P1 certificate issued by the Khadi and Village Industries Board stating that petitioner is entitled to exemption from sales tax. Petitioner has not produced copy of returns filed before the assessing officer or the assessment order. Even though W.P. is pending for the last four years no counter or statement is filed by the respondents. Even though petitioner has produced Ext.P2 order in appeal in a penalty proceeding, it is seen that appeal is allowed not based on any exemption of the Khadi Industries but on the assumption that tax is paid for the supplies to BSNL. In the absence of details furnished by the petitioner and any counter or statement by the respondents, it is not possible for this Court to adjudicate the claim. However, since petitioner has produced Ext.P1 certificate I dispose of the W.P. with direction to the second respondent to verify the records

and see whether claim of exemption was considered in assessment and whether petitioner has been collecting or remitting tax. If there is any mistake in assessment, the second respondent is directed to carry out the correction ignoring limitation on production of a copy of this judgment by the petitioner. However, if claim of exemption was considered and disallowed, petitioner is given three months' time to file appeal against assessment, and if appeal is filed along with a copy of this judgment, there will be direction to the appellate authority to consider the same on merits provided petitioner has not filed any appeal earlier.

(C.N. RAMACHANDRAN NAIR)
Judge